

TITLE 10. CALIFORNIA DEPARTMENT OF CORPORATIONS

NOTICE IS HEREBY GIVEN

The California Corporations Commissioner ("Commissioner") proposes to amend Sections 260.230, 260.231, 260.236.1, 260.241.4 and 260.242, and repeal Sections 260.231.2 and 260.236.2, of Title 10, California Code of Regulations, under the Corporate Securities Law of 1968, as amended, relating to the mandatory use of the electronic Investment Adviser Registration Depository ("IARD") in California.

PUBLIC HEARING

No public hearing is scheduled. Any interested person or his or her duly authorized representative may request, in writing, a public hearing pursuant to Section 11346.8, subdivision (a), of the Government Code. The request for hearing must be received by the Department of Corporations' ("Department") contact person designated below no later than 15 days prior to the close of the written comment period.

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the Department, addressed to Karen Fong, Office of Law and Legislation, Department of Corporations, 1515 K Street, Suite 200, Sacramento, CA 95814-4052, no later than 5:00 p.m. on September 18, 2006. Written comments may also be sent to Karen Fong (1) via electronic mail at regulations@corp.ca.gov or (2) via fax at (916) 322-5875. If this day is a Saturday, Sunday or state holiday, the comment period will close at 5:00 p.m. on the next business day.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The Department licenses and regulates investment advisers pursuant to the Corporate Securities Law of 1968, as amended. Under the Corporate Securities Law, it is unlawful for an investment advisor to conduct business without first applying for and securing a certificate from the Commissioner of Corporations, as specified. (See Corporations Code Section 25230.)

As amended by Assembly Bill 3070 (Chapter 461, Statutes of 2004), Corporations Code Section 25231 requires all investment adviser and investment adviser representative applications and other specified documents to be filed electronically with and transmitted to the web-based IARD, operated by the National Association of Securities Dealers.

Current regulations of the Commissioner set forth requirements and procedures for filing documents, including applications, with the Commissioner, and specify reporting and notification requirements as well as requirements pertaining to a surrender of an investment adviser certificate, as specified.

This regulatory action seeks to conform these rules to AB 3070 by clarifying that all applications, reports, and other documents must be filed electronically through the IARD.

In addition, this regulatory action clarifies the procedure for successions to the business of an investment adviser in cases where the succession is based solely on a change in the predecessor's date or state of incorporation, form of organization, or composition of a partnership. The proposed rule allows the successor to amend the predecessor's Form ADV to reflect the change, rather than require the filing of a Form ADV-W (withdrawal from licensure) and a new Form ADV.

AUTHORITY

Sections 25230, 25230.1, 25231, 25241, 25610 and 25612.5, Corporations Code.

REFERENCE

Sections 25210, 25230, 25230.1, 25231, 25234, 25236, 25237, 25241, 25242, 25510, 25608 and 25608(p), 25608.1(d), 25612.5 and 25613 Corporations Code; Sections 1798.17 and 1798.18, Civil Code; Section 17520, Family Code; Sections 7470, 7473, 7490 and 13140-13144, Government Code; and Section 7 of Public Law 93-579 (5 U.S.C. Section 552a note).

AVAILABILITY OF MODIFIED TEXT

The text of any modified regulation, unless the modification is only non-substantial or solely grammatical in nature, will be available to the public at least 15 days prior to the date the Department adopts the regulations. A request for a copy of any modified regulations should be addressed to the contact person designated below. The Commissioner will accept written comments on the modified regulations for 15 days after the date on which they are made available. The Commissioner may thereafter adopt, amend or repeal the foregoing proposal substantially as set forth above without further notice.

AVAILABILITY OF INITIAL STATEMENT OF REASONS, TEXT OF PROPOSED REGULATIONS/INTERNET ACCESS

The express terms of the proposed action and the initial statement of reasons may be obtained from the Department's website at www.corp.ca.gov. Further, the text may be obtained upon request from any office of the Department. Request Document PRO 25/04-B. An initial statement of reasons for the proposed action containing all the information upon which the proposal is based is available from the contact person designated below. Request Document PRO 25/04-C. As required by the Administrative Procedure Act, the Office of Law and Legislation maintains the rulemaking file, which is available for public inspection at the Department of Corporations, Office of Law and Legislation, 1515 K Street, Suite 200, Sacramento, California.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, the Final Statement of Reasons will be available and copies may be requested from the contact person named in this notice or may be accessed on the website listed above.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code Section 11346.5, subdivision (a)(13), the Department must determine that no reasonable alternative it considered or that has otherwise been identified and brought to the attention of the Department would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

FISCAL IMPACT

- Cost or Savings to any State Agency: None.
- Direct or Indirect costs or savings in federal funding to the state: None.
- Other nondiscretionary cost or savings imposed on local agencies: None.

DETERMINATIONS

The Commissioner has made an initial determination that the proposed regulatory action:

- Does not impose a mandate on local agencies or school districts, or a mandate that requires reimbursement pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code.
- Does not have an effect on housing costs.
- Does not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.
- Does not significantly affect (1) the creation or elimination of jobs within the State of California; (2) the creation of new businesses or the elimination of existing businesses within the State of California; or (3) the expansion of businesses currently doing business within the State of California.

COST IMPACTS ON REPRESENTATIVE PRIVATE PERSON OR BUSINESS

The Department is not aware of any cost impacts that a representative person or business would necessarily incur in reasonable compliance with the proposed action. While there is a cost impact from electronic filing, it is a result of legislation and not a result of this rulemaking action.

EFFECT ON SMALL BUSINESS

The proposed regulatory action will not affect small businesses because investment advisers are excluded from the definition of small business in Government Code Section 11342.610, subdivision (b)(1).

CONTACT PERSON

Nonsubstantive inquiries concerning this action, such as request for copies of the text of the proposed regulations may be directed to Karen Fong at (916) 322-3553. The backup contact person is Suzi Ishikawa at (916) 322-3553. Inquiries regarding the substance of the proposed regulations may be directed to Colleen Monahan, Senior Counsel, at (916) 322-3553.

Dated: July 19, 2006
Sacramento, California

Preston DuFauchard
California Corporations Commissioner

By _____
Timothy L. Le Bas
Deputy Commissioner and General Counsel
Office of Law and Legislation